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*Attorneys for Plaintiffs Alfred H. Siegel, as  
 Trustee for the Circuit City Stores, Inc.  
 Liquidating Trust and Peter Kravitz, as Trustee  
 for the RSH Liquidating Trust*

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION**

**IN RE OPTICAL DISK DRIVE ANTITRUST  
 LITIGATION**

Master File No.: 3:10-md-2143 RS

Case Numbers: 3:15-cv-03248-RS  
 3:15-cv-06325-RS

This document relates to:

*Siegel v. Sony Corporation, et al.*  
 No. 3:15-cv-03248-RS

*Kravitz v. Sony Corporation, et al.*  
 No. 3:15-cv-06325-RS

**DECLARATION OF JAMES T.  
 McCLAVE IN OPPOSITION TO  
 DEFENDANTS' JOINT MOTION FOR  
 SUMMARY JUDGMENT AGAINST  
 CIRCUIT CITY TRUST AND  
 RADIOSHACK TRUST**

Date: September 26, 2017  
 Time: 9:00 a.m.  
 Location: Courtroom 3, 17th Floor  
 Judge: Honorable Richard Seeborg

**PUBLIC VERSION OF DOCUMENT PREVIOUSLY FILED UNDER  
 SEAL PURSUANT TO COURT ORDERS [DKT. NOS. 2721 & 2773]**

1 I, James T. McClave, declare as follows:

2 1. I have been retained by counsel representing the Circuit City and RadioShack  
3 trustees to provide expert analysis on the amount, if any, by which prices of optical disk drives  
4 were elevated on account of the alleged conspiracy to higher levels than would otherwise have  
5 prevailed in the absence of such conspiracy. As set out below, I have estimated that purchasers of  
6 optical disc drives such as Circuit City and RadioShack were overcharged by 13.5% during the  
7 damages period (that is, that they paid 13.5% more than they would have paid had there been no  
8 conspiracy), and I have further concluded that this 13.5% overcharge may be applied to all drives  
9 at issue in the case – including standalone drives, computer drives, and drives in players and  
10 consoles.

11 2. Nothing in this declaration is intended to alter or vary the analysis and conclusions  
12 that I previously presented in detailed expert reports (opening and rebuttal) and during two  
13 depositions (opening and rebuttal). I stand by my prior testimony in its entirety. Given the  
14 technical nature of the formal reports and the length of my deposition testimony, I submit this  
15 declaration merely to summarize the testimony that I will give at trial.

16 3. By way of (brief) background, I have a B.S. degree in physics and a Ph.D. in  
17 statistics. I taught at the university level for 20 years, both in departments of statistics and in  
18 business schools. The primary area of my research and consulting has been econometrics, which  
19 is the application of statistical and mathematical methods to economic issues. During the course  
20 of my academic career, I published peer-reviewed research in econometrics and statistics, and I  
21 have authored or co-authored six textbooks in statistics and econometrics, including Statistics for  
22 Business and Economics, now in its 12th edition, which has been and is currently adopted in many  
23 universities and colleges and translated into several foreign languages. In the course of my  
24 consulting practice over the past 40 years, I have analyzed price and bid data in the context of  
25 more than 100 markets.


26 4. The econometric analyses I performed in this matter used the defendants' own  
27 transactional data, as well as data from non-defendant co-conspirators. These data encompassed  
28

1 records of millions of optical disc drive sales. My initial dataset included more than 1.4 million  
2 individual U.S. transactions. After expanding my dataset to include global and inter- and intra-  
3 defendant sales (in response to critiques by defendants' experts), my final dataset encompasses  
4 more than three million individual transactions.

5         5. To determine whether and how much prices of optical disc drives were elevated on  
6 account of the alleged conspiracy, I utilized a standard and widely accepted statistical  
7 methodology – multiple regression analysis – which allowed me to compare prices during the  
8 period affected by the alleged conspiracy (referred to as the damages period) to competitive prices  
9 (that is, prices during a time period unaffected by the conspiracy, referred to as the benchmark  
10 period) and thereby estimate the likely effect of the alleged conspiracy. My econometric analysis  
11 used January 2003 through December 2009 as the conspiracy period and January 2010 through  
12 December 2011 as the benchmark period. To isolate the price effects of defendants' collusion, I  
13 adjusted for differences unrelated to collusion, such as general economic conditions and drive  
14 characteristics.

15         6. In my opening expert report, which was based on my original 1.4-million-  
16 transaction dataset, I calculated an overcharge percentage of 15.3%. In response to this analysis,  
17 the defendants and their experts complained that my dataset did not encompass global data or  
18 inter- and intra-defendant sales, and further claimed that it did not include transactions for drives  
19 that were ultimately incorporated into players and consoles. In response to these criticisms, I  
20 expanded my analysis database to include global transactions and intra- and inter-defendant  
21 transactions, and I confirmed that the transaction data produced by defendants and their co-  
22 conspirators did in fact include transactions for drives that were incorporated into players and  
23 consoles. My analysis showed that prices for drives sold by Defendants to vertical affiliates and  
24 other Defendants were elevated to supracompetitive levels and that prices for drives used in non-  
25 computer products were closely related to computer drive prices. Further, my analysis showed  
26 that prices paid by retailers, including Circuit City and Radio Shack, were elevated to non-  
27 competitive levels.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and was executed this 10th day of August 2017.

  
James T. McClave